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June 4, 1998

BY HAND

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

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OFFICE OF THE SECRETARY

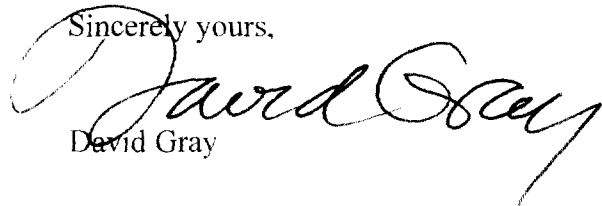
Re: In the Matter of Petition for Declaratory Ruling to Declare Unlawful
Certain RFP Practices by Ameritech
CC Docket No. 98-0062
Comments of U S WEST Communications, Inc.

Dear Ms. Salas:

On behalf of U S WEST Communications, Inc. ("U S WEST"), enclosed for filing are an original and twelve copies of U S WEST's Comments in the above-referenced matter.

If there are any questions concerning the above matter, please communicate directly with the undersigned.

Sincerely yours,


David Gray

Enclosures

cc: Janice M. Myles (w/enc)
ITS, Inc. (w/enc)
Sue D. Blumenfeld (w/enc)
John L. McGrew (w/enc)

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Before the
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OFFICE OF THE SECRETARY

In the matter of)
)
Petition for Declaratory Ruling to)
Declare Unlawful Certain RFP)
Practices by Ameritech)

CC Docket 98-662

To: The Commission

COMMENTS OF U S WEST COMMUNICATIONS, INC.

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June 4, 1998

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the matter of)	
)	
Petition for Declaratory Ruling to)	CC Docket 98-00
Declare Unlawful Certain RFP)	
Practices by Ameritech)	

COMMENTS OF U S WEST COMMUNICATIONS, INC.

U S WEST Communications, Inc. ("U S WEST") hereby submits comments in response to the Petition for Declaratory Ruling ("Sprint Petition") filed by Sprint Communications Company, L.P. ("Sprint"), in the above-designated matter. U S WEST asks that Sprint's requested relief be denied and that the Commission declare that teaming arrangements whereby a BOC jointly markets the long distance services of an unaffiliated interexchange carrier ("IXC") with its own local services can be consistent with sections 271 and 251 of the Telecommunications Act of 1996 ("the 1996 Act").

SUMMARY AND INTRODUCTION

The Sprint Petition seeks a declaratory ruling in connection with a particular Request for Proposal ("RFP") in which Ameritech Corporation ("Ameritech") sought to identify a long distance carrier with which it could team to offer its customers one-stop shopping for a variety of telecommunications services. However, since the Sprint Petition was filed, Ameritech has entered into a teaming arrangement very different from the one described in the RFP.^{1/} The

^{1/} See Ameritech News Release, May 14, 1998 (announcing teaming arrangement with Qwest).

specific relief that Sprint requests -- a declaration that the conduct described in the RFP is “unlawful” and an order that Ameritech “immediately cease any such conduct” -- is therefore moot at this point

While a specific ruling with respect to the terms of the RFP is no longer necessary or relevant, the Commission’s analysis of the broader questions raised by the Sprint Petition will allow the industry to move forward and offer consumers greater choice and competition. What remains of the Sprint Petition is its request for FCC guidance on two legal issues: whether a teaming arrangement between a BOC and an unaffiliated IXC to market the IXC’s long distance services can be consistent with section 271 of the 1996 Act and whether such an arrangement can be consistent with section 251(g) of that same statute. In the Sprint Petition and in two pending court cases,^{2/} a number of major IXCs argue to varying degrees that sections 271 and 251(g) forbid BOC-IXC marketing arrangements. But no such general rule barring teaming agreements is warranted by the terms of the 1996 Act, by the Commission’s rulings interpreting and implementing that statute, or by the public interest.

I. THE MARKETING OF AN UNAFFILIATED IXC’S SERVICES IS NOT THE “PROVISION” OF LONG DISTANCE SERVICE WITHIN THE MEANING OF SECTION 271.

Section 271 indisputably constrains a BOC’s ability to “provide interLATA services originating in any of its in-region States” prior to obtaining the Commission’s approval

^{2/} See *AT&T Corp. v. Ameritech Corp.*, No. 98C2993 (N.D. Ill. 1998); *AT&T Corp. v. U S WEST Communications, Inc.*, No. C98-634 (W.D. Wash. 1998).

under sections 271(c) and (d).^{3/} But a teaming arrangement whereby a BOC simply markets the long distance service of an unaffiliated IXC does not involve the BOC in actually *providing* interexchange service itself, either directly or through resale. Rather, the long distance traffic of a local customer who signs up for long distance service offered pursuant to such a teaming arrangement is carried by the unaffiliated IXC, who has the direct contractual relationship with the customer for that service. While the BOC may handle billing and collection for the IXC, the IXC's name and brand are associated with all long distance charges.^{4/} The service performed by the BOC under such a teaming agreement is merely the joint *marketing* of its local service with the optional long distance service of the unaffiliated IXC.

The ordinary meaning of the 1996 Act's language does not support the conclusion that section 271's prohibition on "*provid[ing]* interLATA services" encompasses a ban on "*marketing*" such services. In the absence of a specific statutory definition -- and no such definition exists here -- a term should be interpreted according to its plain meaning.^{5/} Under the ordinary definition of the word "provide," a BOC "provides" interexchange services only if it

^{3/} 47 U.S.C. § 271.

^{4/} Most BOCs already handle billing and collection for a number of interexchange carriers without running afoul of section 271. See *Implementation of the Telecommunications Act of 1996: Telemessaging, Electronic Publishing, and Alarm Monitoring Services*, 12 FCC Rcd 3824, at ¶ 36 & n.83 (1997) ("*Alarm Monitoring Order*"); see also *Detariffing of Billing and Collection Services*, 102 FCC 2d 1150 (1986), *recon. denied*, 1 FCC Rcd 445 (1986).

^{5/} See *FDIC v. Meyer*, 510 U.S. 471, 476 (1994); see also *American Tobacco Co. v. Patterson*, 456 U.S. 63, 68 (1982) ("As in all cases involving statutory construction, . . . we assume 'that the legislative purpose is expressed by the ordinary meaning of the words used.'" (quoting *Richards v. United States*, 369 U.S. 1, 9 (1962))).

“supplies” or “furnishes” such service *itself*, either by operating the necessary facilities or by purchasing access to another carrier’s network. *See, e.g., Webster’s Third New Int’l Dictionary* 1827 (G.&C. Merriam Co. 1971); *Random House Dictionary of the English Language* 1556 (2d ed. unabridged 1987). The mere marketing of *another* carrier’s service therefore falls outside the ordinary meaning of the term “provide.”

Sprint nonetheless advocates an extraordinarily expansive construction of “provide” -- a definition that may include some forms of marketing -- relying for support primarily on Judge Greene’s interpretation of somewhat analogous provisions in the MFJ.⁶⁷ But those precedents relating to the interpretation of the MFJ cannot control the Commission’s interpretation of a quite different statute passed a decade later. As the Commission observed in a recent court filing, “the 1996 Act replaced the restrictions of the MFJ with *new* provisions.”⁷² Section 601(a)(1) of the 1996 Act expressly terminated all prospective effect of the AT&T decree:

Any conduct or activity that was, before the date of enactment of this Act, subject to any restriction or obligation imposed by the AT&T Consent Decree shall, on and after such date, be subject to the restrictions and obligations imposed by the Communications Act of 1934 as amended by this Act and shall not be subject to the restrictions and the obligations imposed by such Consent Decree.

47 U.S.C. § 152 note. Congress’s purpose in passing the 1996 Act was not to codify the MFJ but

⁶⁷ See Sprint Petition 5-7 (quoting *United States v. Western Elec. Co.*, 627 F. Supp. 1090 (D.D.C.), *appeal dismissed in relevant part*, 797 F.2d 1082 (D.C. Cir. 1986)).

⁷² *AT&T Corp. v. U S WEST Communications, Inc.*, No. C98-634, Memorandum of the Federal Communications Commission as *Amicus Curiae* in Support of Primary Jurisdiction Referral, at 3 (W.D. Wash. 1998) (emphasis added).

to eliminate it; the new statute was designed to “get [the FCC and the Department of Justice] back to their proper roles and to end government by consent decree.” H.R. Conf. Rep. No. 104-458, at 201 (1996). “In place of a process that subjects the communications industry to the terms of a Consent Decree entered 12 years ago and administered by a single district court,” Congress intended “that the expert agencies -- the Federal Communications Commission for communications policy and Department of Justice for antitrust policy -- be charged with administering *a new federal policy* designed to promote competition, innovation, and protect consumers.”^{8/} In the limited instances where Congress intended to incorporate definitions from the MFJ, it did so explicitly. *See, e.g.*, 47 U.S.C. § 273(h) (“As used in this section, the term ‘manufacturing’ has the same meaning as such term has under the AT&T Consent Decree.”); *see also* 47 U.S.C. § 251(g). By contrast, Congress did not choose to incorporate Judge Greene’s views on the definition of “provide”; those views therefore do not govern here.

Not only does section 271 *not* incorporate by reference the MFJ’s definition of the phrase “provide interLATA services,” but Congress in fact adopted language more narrow than that of the MFJ. The 1996 Act defines “interLATA service” by reference to “telecommunications,” *see* 47 U.S.C. § 153(21); “telecommunications,” in turn” is defined as “the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent or received,” *see id.* § 153(43). The MFJ, by contrast, defined “telecommunications” as “the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the

^{8/} *See* H.R. Rep. 103-559(I), at 24 (1994) (emphasis added).

form or content of the information as sent and received. . . . *including* all instrumentalities, facilities, apparatus, and *services (including the collection, storage, forwarding, switching, and delivery of such information) essential to such transmission.*” *United States v. AT&T Co.*, 552 F. Supp. 131, 229 (D.D.C. 1982) (emphasis added), *aff’d sub nom., Maryland v. United States*, 460 U.S. 1001 (1983). As Sprint itself points out, the language *omitted by Congress* led Judge Greene to suggest that marketing fell within the scope of the MFJ because “the line-of-business restriction [did] not merely prohibit ‘the transmissions themselves’ but also the *business of* providing interLATA services.” Sprint Petition at 5 (*quoting Western Elec. Co.*, 627 F. Supp. at 1100). But Congress here limited the scope of section 271 to the transmissions themselves -- implicitly rejecting the dicta in which Judge Greene suggested that the MFJ’s line-of-business restrictions included activities, such as marketing, that are ancillary to the provision of interexchange service.^{9/}

Although the Commission has not squarely addressed the issue in this context, its decisions interpreting the Act suggest that section 271’s prohibition on the provision of service does not extend to marketing. The Commission’s *Alarm Monitoring* decision, for example, held that section 275’s limitation on the BOCs’ ability to “engage in the *provision of*” alarm

^{9/} In any event, despite his occasional dicta, Judge Greene never had the occasion to hold that the mere marketing of long distance services constituted “provision” under the AT&T Decree. In the *Shared Tenant Services* decision, on which Sprint principally relies, the BOC was “purchasing bulk interexchange services . . . for resale to end users,” and Judge Greene held that “[t]he purchase of interexchange capacity on a wholesale basis . . . and its sale at retail clearly constitutes the provision of interexchange services under the decree.” *United States v. Western Elec. Co.*, 627 F. Supp. 1090, 1100 (D.D.C. 1986), *appeal dismissed in relevant part*, 797 F.2d 1082 (D.C. Cir. 1986). Joint marketing arrangements, by contrast, do not involve BOC purchase or resale of any long distance services.

monitoring “by its terms” does not preclude a BOC from marketing an incumbent alarm monitoring company’s services, acting as its sales agent, or performing billing and collection functions.^{10/} The Commission later reiterated this conclusion in *Southwestern Bell Telephone Co.’s Comparably Efficient Interconnection Plan for Security Service*, 12 FCC Rcd 6496, at ¶¶ 41-42 (1997), finding that SBC would not violate section 275’s prohibition on the “provision” of alarm monitoring service where it acted as a sales agent for such a service. It is typically presumed that, where the same term appears in different parts of a statute, the term was intended to have the same meaning in both places.^{11/} The Commission accordingly should conclude that, under section 271, the marketing of long distance service is not tantamount to providing such service, just as it has interpreted section 275 to bar the provision, but not the marketing, of alarm monitoring services.^{12/}

It is noteworthy that, where Congress intended to impose limitations on the BOCs’ or other carriers’ ability to market particular services, it did so explicitly. Unlike sections 271 and 275, which are silent with respect to the BOCs’ marketing activities, sections 272 and 274 expressly bar the BOCs from marketing the services of their long distance and electronic publishing affiliates. *See* 47 U.S.C. §§ 272(g)(2), 274(c)(1)(B)).^{13/} These explicit prohibitions

^{10/} *See Alarm Monitoring Order* ¶¶ 36-37 (emphasis added).

^{11/} *See, e.g., Gustafson v. Alloyd Co.*, 513 U.S. 561, 570 (1995).

^{12/} Although Congress did not use *identical* terms in sections 271 (“provide”) and 275 (“engage in the provision of”), those terms are functionally the same and the legislative history suggests no basis to distinguish them. *Compare* H.R. Conf. Rep. 104-458, at 144-50 (discussing section 271) *with id.* at 156-57 (discussing section 275).

^{13/} Although Congress prohibited the BOCs from marketing an affiliate’s electronic
(continued...)

on marketing would of course be unnecessary if the more general prohibitions on providing long distance services and electronic publishing subsumed a ban on marketing.^{14/} Thus, the absence of a specific marketing prohibition in section 271 (and section 275) -- in contrast to the presence of such provisions in sections 272(g) and 274 -- should be read as intentional and permissive (just as the Commission concluded with respect to section 275).

The Commission's analysis of section 272(g) in its *Non-Accounting Safeguards Order*^{15/} further demonstrates that a teaming arrangement in which a BOC markets an unaffiliated IXC's long distance services does in fact comply with section 271. Section 272(g)(2) provides that a BOC "may not market or sell interLATA service provided by *an affiliate* . . . within any of its in-region States until [the BOC] is authorized to provide interLATA services in such State under section 271(d)."^{16/} In the *Non-Accounting Safeguards* proceeding, the BOCs argued that

^{13/} (...continued)

publishing services in section 274(c)(1)(B), it allowed teaming with nonaffiliates in a provision the FCC has interpreted as restricting each entity to the marketing of its own services. *See Implementation of the Telecommunications Act of 1996: Telemessaging, Electronic Publishing, and Alarm Monitoring Services*, 12 FCC Rcd 5361, at ¶ 166 (1997) (discussing 47 U.S.C. § 274(c)(2)(B)). Section 274(c)(2)(A), which explicitly permits BOCs to engage in joint telemarketing with their electronic publishing affiliate, must be read as a specific exception to the express prohibition in section 274(c)(1)(B).

^{14/} Principles of statutory interpretation require courts and agencies to give effect to every word and clause in a statute and to avoid statutory constructions of one provision that render another superfluous. *See, e.g., Astoria Federal Savings and Loan Ass'n v. Solimino*, 501 U.S. 104, 110 (1991); *Alarm Indus. Communications Comm. v. FCC*, 131 F.3d 1066, 1070 (D.C. Cir. 1997).

^{15/} *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, 11 FCC Rcd 21905 (1996) ("*Non-Accounting Safeguards Order*").

^{16/} A corporate affiliate under the act is "a person that (indirectly or directly) owns or
(continued...)

“they are not prohibited from aligning -- also known as ‘teaming’ -- with a non-affiliate that provides interLATA services and marketing their respective services to the same customers prior to receiving interLATA authority under section 271.”^{17/} In the ensuing decision, the Commission “agree[d] with the BOCs that the language of section 272(g) *only* restricts the BOC[s]’ ability to market or sell interLATA services ‘provided by an affiliate required by [section 272].’”^{18/} The Commission went on to note that, to be lawful, any teaming arrangement with a nonaffiliate would have to be nondiscriminatory in nature because of the equal access requirements.^{19/} But in the course of its analysis the Commission made no suggestion that section 271 applied to such a teaming arrangement.

Sprint itself acknowledges that the Commission’s interpretation of the statutory provisions supports the conclusion that at least teaming arrangements are permissible under section 271, *see* Sprint Petition at 8 -- a conclusion with which U S WEST wholeheartedly agrees.^{20/} The sole court to address the issue, moreover, is in accord with the Commission that

^{16/} (...continued)
controls, is owned or controlled by, or is under common ownership or control with, another person.” 47 U.S.C. § 153(1). Obviously, an unaffiliated IXC would not fall under section 272(g)(2).

^{17/} *Non-Accounting Safeguards Order*, 11 FCC Rcd 21905, at ¶ 289.

^{18/} *Id.* ¶ 293 (quoting 47 U.S.C. § 272(g)(2)) (emphasis added; second brackets in original). Although the FCC characterized the BOC position as one concerning the marketing of teaming partners’ *respective* services, its *Alarm Monitoring Order* unquestionably addressed a BOC’s joint marketing of local and interLATA services and favorably responded to the issue; the *Non-Accounting Safeguards Order* should be read in conjunction with that decision.

^{19/} *See id.* and equal access analysis below.

^{20/} Sprint’s specific arguments as to why the Ameritech RFP violates section 271 are
(continued...)

section 271's prohibition of the provision of interexchange services by the BOCs does not extend to mere marketing of such services. *See AT&T Corp. v. Ameritech Corp.*, No. 98C2993, slip op. at 8-9 (N.D. Ill. May 18, 1998). Thus, no real doubt remains that section 271 permits a BOC to market local services jointly with the long distance services of unaffiliated IXCs so long as other statutory requirements are met.

II. JOINT MARKETING CONDUCTED PURSUANT TO A TEAMING ARRANGEMENTS DOES NOT PER SE VIOLATE THE EQUAL ACCESS REQUIREMENTS OF SECTION 251(g).

Given the conclusion that BOCs may jointly market long distance services with unaffiliated IXCs under certain circumstances -- and, as noted, even Sprint recognizes the validity of that conclusion -- the equal access requirements of section 251(g) should not be read to create a backdoor prohibition of such conduct. Rather, as the Commission recognized in its *BellSouth Order*, the equal access rules must be interpreted in a manner that is consistent with the "BOCs' right to jointly market local and long distance services."^{20/} If section 251(g) were interpreted to preclude joint marketing despite the fact that section 271 permits it, the Act would

^{20/} (...continued)
of course now moot.

^{21/} *Application of BellSouth Corp., et al. Pursuant to Section 271 of the Communications Act of 1934, as Amended, To Provide in-Region, InterLATA Services in South Carolina*, 13 FCC Rcd 539, at ¶ 238 (1997) ("*BellSouth Order*"). The *BellSouth Order* reflects the assumption that a BOC would be jointly marketing its own long distance services, but there is no apparent reason why more liberal rules should govern the marketing of a BOC's *own* service than would apply where that BOC marketed the service of an unaffiliated IXC. As discussed below, the risk of discriminatory conduct in fact would seem greater in the former case.

be self-contradictory.^{22/} It is well-established that a statute should not be read to contradict itself.^{23/}

Nothing in the 1996 Act requires such a reading. Section 251(g) preserves the equal access obligations that existed under court orders and FCC decisions before the Act was passed, while transferring the authority to enforce all such obligations to the FCC.^{24/} Section 11(A) of the MFJ, for example, required each BOC “provide to all interexchange carriers and information service providers exchange access, information access, and exchange services for such access on an unbundled, tariffed basis, that is equal in type, quality and price to that

^{22/} Compare *Application of Ameritech Michigan To Provide in-Region, InterLATA Services in Michigan*, 1997 WL 522784, at ¶¶ 375-376 (Aug. 19, 1997) (“*Ameritech Order*”) (rejecting as inconsistent with equal access requirements a marketing script that allowed Ameritech to recommend its own long distance services) with *BellSouth Order* ¶¶ 232-39 (approving nearly identical script proposed by BellSouth and recognizing that *Ameritech Order* had given “too little weight” to BOCs’ rights under section 271 and 272).

^{23/} See *Bell Atlantic Tel. Cos. v. FCC*, 131 F.3d 1044 (D.C. Cir. 1997) (affirming FCC reconciliation of two potentially contradictory provisions of 1996 Act); *Atwell v. Merit Sys. Protection Bd.*, 670 F.2d 272, 286 (D.C. Cir. 1981) (noting that a “cardinal canon of statutory construction . . . dictates that provisions should, whenever possible, be construed to achieve consistency”).

^{24/} Section 251(g) provides:

[E]ach local exchange carrier . . . shall provide exchange access, information access, and exchange services for such access to interexchange carriers and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on the date immediately preceding the date of enactment of the Telecommunications Act of 1996 under any court order, consent decree, or regulation, order, or policy of the Commission, until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after such date of enactment.

47 U.S.C. § 251(g).

provided to AT&T and its affiliates.”^{25/}

On its face, the decree’s equal access provision imposed a duty on the BOCs only to interconnect with interexchange carriers on a tariffed and nondiscriminatory basis. But Judge Greene soon read that provision to impose additional obligations concerning the BOCs’ communications with potential customers of interexchange carriers. Judge Greene required the BOCs to inform customers that they had a choice of interexchange carrier and to provide customers with the names of all interexchange carriers offering service in their region.^{26/}

However, Judge Greene never ruled that the MFJ’s equal access obligations necessarily prohibited BOCs from jointly marketing long distance services with their own local services. To the contrary, in the one case where Judge Greene granted a waiver of the line of business restrictions and allowed the BOCs to market cellular long distance, Judge Greene found that such joint marketing would comply with the equal access rules as long as certain safeguards were in place to protect consumer choice. He specifically required the BOCs to inform customers that they had a choice of carriers and to provide the IXC’s with access to those customers. *See Western Elec.*, 890 F. Supp. at 12-13.^{27/}

^{25/} *United States v. AT&T Co.*, 552 F. Supp. 131, 227 (D.D.C. 1982). That provision also referred to Appendix B to the decree, which established a plan for the BOCs to upgrade their equipment in order to offer equal access to the local exchange for AT&T’s interexchange competitors.

^{26/} *See United States v. Western Elec. Co.*, 890 F. Supp 1, 7 (D.D.C. 1995) (requiring the BOCs to institute “procedures for informing customers of their choices for interexchange services”), *vacated on other grounds*, 84 F.3d 1452 (D.C. Cir 1996); *United States v. Western Elec. Co.*, 578 F. Supp. 668, 676 (D.D.C. 1983) (same).

^{27/} In light of the fact that the BOCs were in that case actually seeking to provide
(continued...)

In its decisions under section 251(g) of the Act, the Commission has followed Judge Greene's lead in concluding that section 251(g) applies to BOCs' communications with their customers.^{28/} Nonetheless, the Commission has acknowledged that a requirement of absolute neutrality is inappropriate in light of the fact that the 1996 Act permits the BOCs to market long distance service under certain circumstances. The BOCs' "continuing equal access obligations pursuant to section 251(g)" must be "balance[d]" against "the right to market services jointly." *BellSouth Order* ¶ 237; *see also Non-Accounting Safeguards Order* ¶ 292.

The *BellSouth Order* identified a "safe harbor" that "harmonize[s] the existing equal access requirements with [the BOCs'] right under the Act to engage in joint marketing." *BellSouth Order* ¶¶ 236, 238. The Commission in that order specifically approved a BellSouth

^{27/}

(...continued)

long distance services, Judge Greene imposed very stringent safeguards on the BOCs in order to provide the strongest possible protection against anticompetitive behavior. *See Western Elec.*, 890 F. Supp. at 8. In the context of their request for a waiver of the MFJ's restrictions on interexchange cellular services, the BOCs did not oppose most of these safeguards. *See id.* at 7 n.12 (noting that the BOCs did not oppose the equal access safeguards).

^{28/}

It is arguable that, at least in this context, section 251(g), which by its terms applies only to "exchange access, information access, and exchange services," extends only to the provision of telecommunications services and facilities to IXC's and does not include marketing activities aimed at long distance customers. Judge Greene's original decisions on equal access involved circumstances in which the BOC was engaging in what was deemed to be the provision of long distance service. As the provider of long distance service, the BOC assertedly had an incentive to abuse its control over its local exchange facilities in favor of its own service. *See, e.g., Western Elec.*, 627 F. Supp. at 1102-1103. In such circumstances, the court sought "as much of a guarantee against anticompetitive behavior as can be achieved." *Western Elec.*, 890 F. Supp. at 8. In contrast, a teaming arrangement in which the BOC would by definition not provide interLATA service would undermine the rationale relied on for the expansive application of the AT&T Consent Decree's equal access provision. A more narrow interpretation of section 251(g) as applying only to a BOC's provision of access services to IXC's might therefore be appropriate.

marketing script whereby BellSouth would recommend its own long distance service to a new customer calling to request service while simultaneously offering to read a list of other available long distance carriers. *See id.* ¶ 233.^{29/} The Commission, moreover, reexamined the proposed Ameritech marketing script that it had rejected in its *Ameritech Order* and concluded that the earlier order had “placed too much weight on the equal access obligations, and too little weight on the BOCs’ right to jointly market local and long distance services.” *See id.* ¶ 238. The Commission therefore reversed its earlier decision and approved the Ameritech script -- which named Ameritech Long Distance while offering to read a list of other providers -- as well.^{30/}

Thus, a BOC may jointly market long distance services with its own local services and still fulfill its equal access obligations under section 251(g) so long as the standard marketing script meets the two basic requirements of the “safe harbor” identified in the *BellSouth Order*. First, the BOC must “continue to inform [such] customers of their right to select the interLATA carrier of their choice and take the customer’s order for the interLATA carrier the customer selects.”^{31/} Second, the BOC must “contemporaneously state[] that other carriers also provide long distance service and offer[] to read a list of all available interexchange carriers in random

^{29/} The proposed BellSouth Script was as follows: “You have many companies to choose from to provide your long distance service. I can read from a list the companies available for selection, however, I’d like to recommend BellSouth Long Distance.” *See id.*

^{30/} Ameritech proposed to use the following script: “You have a choice of companies, including Ameritech Long Distance, for long distance service. Would you like me to read from a list of other available long distance companies or do you know which company you would like?” *See id.* ¶ 232. The *Non-Accounting Safeguards Order* had cited with approval a similar script proposed by NYNEX. *See Non-Accounting Safeguards Order* ¶ 292; *BellSouth Order* ¶ 239.

^{31/} *Non-Accounting Safeguards Order* ¶ 292; *see also BellSouth Order* ¶¶ 236-239.

order.” *BellSouth Order* ¶ 237.^{32/} Assuming these obligations are satisfied, the BOC may freely recommend its long distance service to inbound callers seeking local exchange service.^{33/}

The Commission’s decisions defining this safe harbor arose in a context in which it was assumed that the BOC would be marketing its own long distance service after having received authorization to do so under section 271. But the scope of a BOC’s equal access obligations under section 251(g) logically does not depend on whether or not it has received approval under section 271. Section 251(g) applies equally before and after section 271 approval. The equal access obligations imposed by section 251(g) are aimed not at protecting competition in *local service markets* -- the chief concern of the section 271 inquiry -- but rather guarantee IXCs a level playing field with which to provide *long distance services*. The safe harbor identified above achieves that objective irrespective of the state of competition in the local market.

Thus, the Commission’s conclusion that a BOC may market long distance services consistently with its equal access obligations applies regardless of whether the BOC is marketing its own long distance service, after having obtained permission to provide such service under section 271, or is marketing the long distance service of an unaffiliated IXC, as it is allowed to do even before obtaining approval to provide service of its own. If anything, equal access concerns are *greater* where a BOC is marketing its own long distance service. As noted,

^{32/} If requested, the BOC must provide a new customer with the telephone numbers as well as the names of all of the carriers offering interexchange service in its service area, in random order. *See Non-Accounting Safeguards Order* ¶ 292.

^{33/} *See BellSouth Order* ¶¶ 233, 239.

Judge Greene viewed the BOCs' asserted incentive to engage in anticompetitive behavior to be greatest where the BOC markets its own long distance service or that of an affiliate -- which is not the case here. *See Western Elec.*, 890 F. Supp. at 8.^{34/} The Commission's safe harbor is if anything even safer where a BOC markets the long distance services of an unaffiliated carrier.^{35/}

III. TEAMING ARRANGEMENTS FURTHER THE PUBLIC'S INTEREST IN GREATER COMPETITION AND CONSUMER CHOICE.

The Sprint Petition suggests, erroneously, that teaming agreements involving the joint marketing of local and long distance services somehow reduce competition in the markets for both services. *See Sprint Petition* at 7. The opposite is in fact true. In entering into teaming arrangements, the BOCs are responding to the growth of competition in local markets by offering consumers the simplicity and convenience of one-stop shopping for telecommunications services. Those arrangements, moreover, invigorate competition in the long distance market by offering a highly effectively means of marketing their services to smaller IXC's that lack the giants' massive marketing operations.

The Sprint Petition mischaracterizes teaming arrangements as a means for the BOCs to compete with the IXC's in providing long distance services before such competition

^{34/} *See also supra* n.28.

^{35/} In denying a temporary restraining order against Ameritech's joint marketing arrangement with an unaffiliated IXC, the district court for the Northern District of Illinois observed that "The success of [the IXC's] section 251(g) argument] hinges on establishing that the Act proscribes teaming arrangements in which a BOC provides consumers with information about one particular long distance carrier, states that long distance is also available via other carriers, and then offers to read a list of those carriers in random order. *The plaintiffs have failed to establish this*, or to provide evidence supporting their claims about what Ameritech is actually telling consumers." *AT&T Corp. v. Ameritech Corp.*, No. 98C2993, slip op. at 11 (N.D. Ill. May 18, 1998).

would be allowed under section 271. *See id.* What that mischaracterization ignores is that a teaming arrangement in which a BOC is compensated only for its marketing and related activities does not enable the BOC either to provide long distance service or to garner the profit from such service. The only way for a BOC to offer such service and receive the resulting profits is to meet the requirements of section 271, and it therefore retains every incentive to do so.^{36/} Thus, the BOCs are not competing with the IXC's in the long distance market. Rather, they are competing to satisfy their *local customers in the local market*: the precise type of competition that the 1996 Act intended to create both before and after BOCs obtain approval under section 271. Faced with the ability of competitive local exchange carriers ("CLECs") and IXC's to offer customers one-stop shopping -- and the BOCs' market research consistently demonstrates that consumers want the simplicity of one-stop shopping -- the BOCs are pursuing strategies that will benefit customers in a competitive environment by giving those customers greater convenience and lower prices.

This is not to say that teaming arrangements do not stimulate competition in long distance markets. They do -- but not between BOCs and large IXC's like Sprint, AT&T, and MCI. Rather, they strengthen competition between the large IXC's and the smaller IXC's that stand to gain a marketing outlet by teaming with a BOC. These smaller carriers have the desire and expertise to compete with the three or four major IXC's that currently dominate the long distance market, and often offer prices that are significantly lower than those of the better-known long distance carriers. But they typically lack the marketing resources to challenge the major

^{36/} For similar reasons, the BOCs also lack any incentive to favor an IXC teaming partner by giving it some unfair advantage in providing long distance.

IXCs effectively. Teaming arrangements address this competitive imbalance by allowing these smaller IXCs to reach local customers who would otherwise never hear of them except as one of several other unfamiliar names in a random list of possible long distance carriers. Joint marketing, therefore, will empower a BOC's teaming partner(s) to inject new competitive vitality into long distance markets.

Thus, teaming arrangements bring greater consumer choice and more competition in both interchange and local markets. These developments can only further the public interest. The Commission should reject this effort by the major IXCs to deny consumers the benefits of these procompetitive initiatives.

CONCLUSION

For these reasons, the Commission should determine that the marketing by a BOC of the long distance services of an unaffiliated IXC can be consistent with sections 271 and 251(g) of the 1996 Act.

Respectfully submitted,



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